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10/516,891

05/31/2005

Rupert Christian Scheiner

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EXAMINER

BAYS, PAMELA M

ART UNIT

PAPER NUMBER

4118

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/516,891	<b>Applicant(s)</b> SCHEINER, RUPERT CHRISTIAN	
	<b>Examiner</b> PAMELA BAYS	<b>Art Unit</b> 4118	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05/31/2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 December 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                        |                                                                   |
|----------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>03 December 2004</u> .                                        | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Specification***

1. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

The following title is suggested: CLOTHING ATTACHMENT DEVICE FOR AN EXTERNAL HEARING PROTHESIS.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 29 recites the limitation "the hearing prosthesis" in Line 1. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 19 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Martens (U.S. Patent No. 3,858,280).

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6. Regarding Claim 19 and 21, Martens discloses a clothing attachment component (Fig. 1) a casing 22, a receiving means 32 inside of the casing 22, and an elongate member 14 having a disc 16 and a pin member 14 adapted to pass through at least a portion of an item of clothing 18 and be received in the receiving means 32 and releasably engage therewith (Col. 2, Lines 20-25). An orifice 40 is formed in the engagement device 32 to enable entry of the pin member 14 into the chamber 40. In addition, Martens discloses a pin member engagement device (Fig. 4) being able to frictionally engage with (Col. 3, Lines 20-25) plurality of spheres (106, Fig. 4) disposed in a circular arrangement within a chamber (42, Fig. 1). The chamber has an inner wall (24, Fig. 1) of which a portion is frusto-conical (26, Fig. 1) such that the chamber expands in diameter away from front surface of the engagement device (Fig.1; Col. 2, Lines 35-40) . In addition, the pin engagement device (32, Fig. 1) has a spring (48, Fig. 1) acting and mounted between a rearward end of the chamber (28, Fig. 1) and a plate ("shoulder", 50, Fig. 1), where the spring (48, Fig. 1) is adapted to urge the plate ("shoulder", 50, Fig. 1) against the spheres (106, Fig. 4) within the chamber (42, Fig. 1), as described in Col. 2, Line 67-68. Furthermore, Martens discloses the engagement of said elongate member (14, Fig. 1) and said receiving means (32, Fig. 1) is releasable by a magnetic unlocking device (Fig. 6), comprising of a magnet (124, Fig. 6) having a magnetic field of a strength sufficient to overcome the bias provided on the spheres (106, Fig. 4) by the spring (48, Fig. 6) and so cause the spheres (106, Fig. 4) to move rearwardly relative to the chamber (Col. 4, Lines 31-35, 54-56;).

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7. Claim 22 is rejected under 35 U.S.C. 102(b) as being anticipated by Wilson et al (U.S. Patent No. 3,430,829).

8. Regarding Claim 22, Wilson et al teaches a garment attached container (Fig. 2), comprising a casing 11 and 12, an elongate member 23 extending outwardly from the casing 11 adapted to pass through a portion of an item of clothing 24, and a receiving means 25 adapted to receive at least a portion of the elongate member 25 and releasably engage therewith (Col. 2, Lines 20-25). Furthermore, the engagement of said elongate member 23 and said receiving means 25 is releasable by an unlocking clutch 25 and 28 (Col. 2, Lines 32-35, 47-49).

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1, 2, 5-18, 20, and 24-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Martens, in view of applicant admitted prior art.

11. Regarding Claims 1, 2, and 5, Martens discloses a clothing attachment device (Fig. 1) comprising of an elongate member 14, which is a pin member extending from a proximal head 16 to a distal end and adapted to pass a portion of an item of clothing 18 (Col. 2, Lines 22-24), and a receiving means 32 adapted to receive at least a portion of the elongate member 14 and releasably engage therewith by an unlocking device Fig. 6

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(Col. 1, Lines 36-40). However, Martens does not disclose that the article attachment device could be mountable to an external component of a hearing prosthesis. Applicant admitted prior art teaches that the external component of a hearing prosthesis (Fig. 1) is commonly attached to the clothing using a clip 30 (Page 1, Paragraph 4). Therefore, it would be obvious to a person having ordinary skill in the art at the time of the invention to mount any type of known clothing attachment device, such as the device disclosed by Martens, to the external component of a hearing prosthesis in order to secure the external component to the clothing of the user.

12. Regarding Claim 6, Martens discloses (Fig. 1) a receiving means 32 mounted to a casing 22. However, Martens does not disclose that the casing belongs to an external hearing prosthesis. Applicant admitted prior art teaches that the external component of a hearing prosthesis (Fig. 1) is commonly attached to the clothing using a clip 30 (Page 1, Paragraph 4). Therefore, it would be obvious to a person having ordinary skill in the art at the time of the invention to mount any type of known clothing attachment device, such as the device disclosed by Martens, to the external component of a hearing prosthesis in order to secure the external component to the clothing of the user.

13. Regarding Claims 7-9, Martens discloses (Fig. 1) a clothing attachment device wherein the receiving means 10 comprises an orifice 26 extending from the front surface 24 to a chamber within into the receiving means 10, the orifice 26 able to receive at least a portion of the length of the elongate member. In addition, the chamber of the receiving means 32 has a inner wall 24 of which at least a portion thereof is

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frusto-conical such that the chamber expands in diameter away from the front surface 26 of the receiving means 32 (Fig. 1, Col. 2, Lines 37-40).

14. Regarding Claims 10, Martens discloses a clothing attachment device (Fig. 1) wherein the receiving means 32 comprising of a pin engagement mechanism 36, 44,46 that frictionally engages the pin member 14 on insertion of the pin member 14 through the orifice 26 and into the chamber 40 (Col. 3, Lines 20-24).

15. Regarding Claim 11, Martens discloses a clothing attachment device (Fig. 1) wherein the pin engagement mechanism 36, 44, 46 comprises a plurality of engagement members (106, Fig. 6) disposed in at least a substantially circular arrangement within the chamber (100,102,104, Fig. 6).

16. Regarding Claims 12 and 13, Martens discloses that all of the engagement members are spherical members (106, Fig.4). However, Martens does not disclose the specific material composition of the retaining balls, only that they would need to tightly and frictionally engage with the shank (Col. 3, Line 23), therefore it would be obvious to a person having ordinary skill in the art to make the balls out of any material with this ability, such as metal.

17. Regarding Claims 14-16, Martens discloses a clothing attachment device (Fig. 1) wherein the engagement members 44, 46 are normally biased in an engaging configuration within the chamber 42. Additionally, Martens discloses a biasing means comprising of a spring 48 and a plate ("shoulder") 50 is positioned within the chamber ("housing") 22 which, when in its relaxed condition, displaces the engagement members 44,46 towards the front surface 26 of the receiving means 32 and into the engaging

configuration (Col. 3, Lines 20-24). Furthermore, Martens discloses that the spring 48 is mounted between a rearward end of the chamber 28 and the plate 50, and the plate is mounted to a forward end of the spring 48.

18. Regarding Claim 17, Martens discloses a magnetic unlocking device (Fig. 6) with a magnetic field of a strength sufficient to overcome the bias provided on the engagement members 44, 46 by the biasing means 32, 48 and cause the engagement members 44, 46 to move rearwardly relative to the chamber 22 ("housing") when brought adjacent a rear surface of the receiving means (Col. 4, Lines 50-57).

19. Regarding Claim 24-28, Martens discloses an clothing attachment device (Fig. 1) comprising of an elongate member 14 a retaining means 32, comprising partly of a plurality of spheres (106, Fig. 6) disposed in a substantially circular arrangement within a chamber (100,102,104, Fig.6) for frictionally retaining a portion of the elongate member (Col. 3, Lines 20-25) in a first configuration (Fig. 1) and for releasing the at least one portion in a second configuration (Fig 5). The attachment device as disclosed by Martens further comprises of a biasing means, a spiral spring 48 (Fig. 1), for biasing the retaining device 32 into the first configuration (Fig. 1). Additionally, Martens discloses a retaining means 32 to be fastened to an item of clothing 18, when the retaining means 32 is frictionally retaining the said at least a portion of the elongate member (Col. 3, Lines 20-25). Furthermore, the elongate member 14 (Fig. 1) is releasable from the retaining means 32 (Fig. 1) by momentarily counteracting the biasing means, comprising of a spiral spring 48 (Fig. 1) to cause the retaining means 32 (Fig.1) to assume the second configuration (Fig. 5, Col. 4, Lines 30-35). Referring to



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Fig. 6, the retaining means 32 comprises a magnetic material (Col. 4, Lines 51-53) and the biasing spiral spring 48 is counteracted, by applying a magnetic field to the retaining means (Col. 4, Lines 54-61). However, Martens does not disclose that the article attachment device is incorporated into the external component of a medical device, specifically hearing prosthesis, to enable the external component to be worn by the user. Applicant admitted prior art teaches that the external component of a hearing prosthesis (Fig. 1) is commonly attached to the clothing using a connected clip 30 (Page 1, Paragraph 4). Therefore, it would be obvious to a person having ordinary skill in the art at the time of the invention to connect any type of known clothing attachment device, such as the device disclosed by Martens, to the external component of a hearing prosthesis in order to secure the external component to the clothing of the user.

20. Regarding Claim 18, 20, and 29, Martens discloses all of the claimed elements as described above. However, Martens does not disclose that the article attachment device could be incorporated for use into a medical device such as an external component of a hearing prosthesis, specifically a cochlear implant. Applicant admitted prior art teaches that the external component of a cochlear implant (Fig. 1) is commonly attached to the clothing using a clip 30 (Page 1, Paragraph 4). Therefore, it would be obvious to a person having ordinary skill in the art at the time of the invention to mount any type of known clothing attachment device, such as the device disclosed by Martens, to a medical device such as the external component of a cochlear implant, as suggested and taught by Applicant admitted prior art, in order to secure the external component to the clothing of the user.

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21. Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Martens, in view of applicant admitted prior art, and further in view of Wilson et al.

22. Regarding Claims 3 and 4, Martens and the applicant admitted prior art disclose all of the claimed invention as applied to Claims 1 and 2 above, except for a pin member extending outwardly from a casing to its distal end, nor that the proximal end of the pin member is integrally connected to the casing. Wilson et al teaches a garment attached container (Fig. 2) with a pin member 23 integrally connected to the bottom of the casing 11 of the container, with the pin member 23 extending outwardly from the casing to a distal end to be inserted through a garment 24 and to be received by a clutch 25. Therefore, it would be obvious to one of ordinary skill in the art at the time of the invention to modify Marten's device by mounting the pin member to the casing, as suggested and taught by Applicant admitted prior art, in order to successfully attach the casing to an article of clothing.

23. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wilson et al in view of applicant admitted prior art.

24. Regarding Claim 23, Wilson et al discloses a garment attached container (Fig. 2). However, Wilson et al does not disclose that the attached container could be the external component of a hearing prosthesis, specifically a cochlear implant. Applicant admitted prior art teaches that the external component of a cochlear implant (Fig. 1) is commonly attached to the clothing using a connected clip 30 (Page 1, Paragraph 4). Therefore, it would be obvious to a person having ordinary skill in the art at the time of the invention to connect any type of known clothing attachment device, such as the

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device disclosed by Wilson et al, to the external component of a cochlear implant in order to secure the external component to the clothing of the user.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PAMELA BAYS whose telephone number is (571) 270-7852. The examiner can normally be reached on Monday-Friday, 9am-5pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Quang Thanh can be reached on (571) 272-4982. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/P. B./  
Examiner, Art Unit 4118

/Quang D. Thanh/  
Supervisory Patent Examiner,  
Art Unit 4118